known) still to give him a formal opportunity for submitting a full written defence, taking care that he is furnished with the necessary copies, extracts, &c., to enable him to know all that is charged against him, and reply to all the evidence[1].

In cases of officers not removable without sanction of Government[2], and when any formal enquiry or departmental investigation is needed, there is a special Act (XXXVIII of 1850), authorising Government to appoint a Commission or to direct the Court or Board to which such officer is subordinate to hold a "formal and public" enquiry. Articles of charge are to be drawn up, evidence is to be heard, and in fact the whole enquiry is conducted much like a trial in Court. This Act is very rarely had recourse to and this brief notice of it will be sufficient.

## Section IV.—The Protection extended by law to Forest Officers.

### § 1.—*Civil Suit will not lie.*

In the preceding section we considered the obligations forest officers were under, and the great care necessary on their part to avoid every suspicion that might arise from their being concerned in trading transactions, or from their receiving gifts of any kind in their official character. But the very existence of the necessary legal provisions in these matters, may also render forest officers (and public servants generally) peculiarly liable to unjust comment, and even to malicious accusation, since those officers have often to discharge a duty which is displeasing to individuals or curtails their

[1] Rules about suspension, subsistence allowance during it, and the ultimate grant or refusal of the pay accruing during the term of such suspension, according to the result of the enquiry, are to be found in the note to section 54 of the Civil Pension Code. The Forest Code mentions the suspension of the subordinate staff (Forest Rangers and downwards) by the divisional officers, pending Conservator's orders. (Section 46.)

[2] The Act only alludes to officers in the service of Government not removable without the sanction of Government, and 'Government' is defined in the Act to mean the Governor-General in Council, and the Governors and Lieutenant-Governors of Provinces.

liberty, and so may give rise to feelings of enmity and an unworthy desire of revenge.

Forest officers, therefore, are protected by law, both as regards civil suits and criminal prosecutions.

In the first, by section 73 of the Indian Act, no civil suit will lie against any public servant for anything done by him in good faith under the Act[3]. Nor can a forest officer be held liable for loss of timber taken charge of under section 45 of the Act, or stored at a depôt under section 41; unless, of course, there is fraud and malice[4]. (*See* Sections 43 and 49 and Burma, section 79.)

[3] Or under Rules made under it; though this is not stated, it would, I think without doubt, be so decided. (See Burma Act, section 72). A similar provision ought to be added to the Forest Regulations of Hazara and Ajmer and to the Berar Rules.

[4] See also under the head of Agency in the Chapter on Contract Law. It may be useful here to refer to the English Law, as explained in Broom's Constitutional Law (Edn. 1866, pages 618-9). The author says that an action will not lie against a public agent for anything done by him in his public character or employment, though alleged to be, in the particular instance, a breach of such employment and constituting a particular and personal liability. And no such person is understood personally to contract.

On principles of public policy an action will not lie against a person acting in a public character and situation which from its very nature might expose him to an infinite multiplicity of actions, at the instance of any person who might suppose himself aggrieved. The very liability to such suits would in all probability prevent any prudent person from accepting any public situation at such hazard or peril to himself.

But he might be liable for an act or tort, wrongful in itself and injurious to another. If such an act was done under orders, or in the belief that it was authorized and lawful, the principle was laid down in the case *Rogers* versus *Dutt*, quoted by the author I am alluding to. "But let us assume," said the Court in that case, "that the particular act complained of is to be viewed as the act of Government, and that in the part which the defendant (the public servant) took, he acted merely as the officer of Government, intending to discharge his duty as a public servant in perfect good faith and without malice, general or particular, against the plaintiff. Even on this assumption, if the act complained of was wrongful as against plaintiff and produced damage to him, he (the plaintiff) must have the same remedy by action against the doer, whether the act was his own, spontaneous and unauthorized, or whether it was done by order of the superior power. The civil irresponsibility of the supreme power for tortious acts could not be theoretically maintained with any show of justice if its agents were not personally responsible for them: in such cases the Government is morally bound to indemnify its agent * * *, but

### § 2.—*Criminal Prosecution.*

The Burma Act, besides mentioning civil suits, also specifically mentions a criminal prosecution which the Indian Act does not. But the same result is practically attained by the provisions of the General Criminal Law (Indian Penal Code), which declares in section 79 that nothing is an offence which is done by a person who is justified by law in doing it, or who, by reason of a mistake of *fact* (not a mistake of *law*), in good faith believes himself to be justified in doing it.

I may here mention that a subordinate officer, if ordered by his superior to do an act which was criminal or clearly illegal, would not be justified in doing it. The circumstances might be such as could make it only just for the Government to exercise its prerogative of pardon, but, as a matter of law, a conviction would be good. Even the orders of Government would not be a protection, unless the circumstances were such that the whole transaction was "an act of State" (as for example during war, &c.) and beyond the cognizance of the Courts[5].

### § 3.—*Sanction for Prosecution in certain cases.*

But even supposing a public servant has actually committed an offence, taken a bribe, or what not, *as such* public servant, it is not lawful for every one to institute a prosecution as he might against a private person.

A public servant of such a rank that he is not removable from his office without the sanction of Government (which is a matter either determined by some Act, or by departmental rules),

the right to compensation to the party injured is paramount to this consideration, that is to say, special circumstances may render even a public servant personally responsible for acts *bonâ fide* done by him on behalf of the public, which in the contemplation of the law injuriously affects another." (*Op. cit.*, pp. 619-20.)

The head of the department cannot be made liable for the remissness of his subordinates (Broom, p. 244).

[5] For further particulars see note in Mayne's Penal Code (9th Edn.), page 55, and Broom's Constitutional Law (Edn. of 1866), page 621.

can only be prosecuted for an offence[6] committed by him *in his capacity* of public servant, "with the sanction or under the direction of the Government having power to order his removal or of some officer empowered on this behalf by such Government or of some * * authority to which such public servant is subordinate, and whose power to give such sanction has not been limited by such Government[7], and the section goes on to say that no such public servant shall be prosecuted for any act *purporting to be done by him in the discharge of his duty*, unless with the sanction of *Government*.

It will be observed that this protection is given to the superior orders of public servants. Those removable by any authority other than Government itself (and not by judicial officers) may be prosecuted without sanction[8].

It will also be observed that this sanction only refers to cases where the public servant is accused *as such*: thus, if a forest officer were to commit a theft, he could be prosecuted like any one else, for the offence has nothing to do with his being a public servant; but if, as a Forest Ranger, he took a bribe to allow cattle to graze (for example), here his being a public servant is the essence of the offence: so if he forged a public document, but not if he forged a bond or a relation's will, which had only reference to his private personality.

It may always happen that a forest officer, prosecuted and convicted of an offence as a private individual, might be so affected in character and in public estimation by the result that he would be unfit for retention in the public service, and so the fact of his

[6] An offence against the Indian Penal Code *or any* other law: "offence" has not the restricted meaning in the Criminal Procedure Code as it has in the Indian Penal Code.

[7] Criminal Procedure Code, section 193: the words omitted refer to Courts and Judges and do not affect the point we are considering.

[8] Though such persons may be prosecuted by private parties without any sanction; if it is intended to prosecute them departmentally, there may be service rules regarding a report to be made to the Conservator of Forests. (See Forest Department Code, para. 46.)